



Terms of Reference (Africa Regional Study on ISDS) August 2025

1.0. Background

These Terms of References serve as a guide to undertake a research study on the fiscal impact of ISDS in the Africa and MENA region. This research builds on existing work including through campaigns and research by PSI and other actors to support the position of party States, CSOs, Trade unions and other experts who have long been opposed to ISDS for reasons including, strangulation of national policy objectives to protect labour, the environment, private sector control of State policies and fight against illicit financial flows. Of essence is an analysis of the current dispute settlement mechanism, including its impact on resourcing public services and public sector workers, and on national policy autonomy.

This study will investigate the impact of settlement of ISDS claims and the government expenditure on critical public sector workers and public services like education, health care, social protection, infrastructure development, among others. The study builds onto existing research studies on ISDS in Africa, including PSI's most recent study on "Africa can lead the way to protect workers and public services from ISDS".

In this study we will deepen this discussion by studying selected governments' annual budgets and expenditures. We will interrogate the extent to which this often-unplanned expense undermines government's response to emergent and existing public needs, consequently burdening public sector workers and their citizens. Further, the study will identify and map out actors, opportunities and strategies for leveraging to further the campaign against ISDS in Africa. Specifically, the study will draw on the recently concluded AfCFTA Protocol on Investment (POI) given its potential to generate a new momentum to drive the campaign to stop ISDS in Africa.

2.0. The Task

The history of economic development and growth of the African and MENA regions has been characterised by failed experiments, poor planning and impractical orthodoxies. This has left both the Africa and MENA region at the mercy of states and ruling elites who are unable to meet the challenges of both rising expectations from their citizens and the imperatives of sound policy design and implementation. For most of these countries, this problem is the logical consequence of their historical trajectory marked, on the one hand, by colonization and the dispossession of their natural and human resources, and on the other hand by inadequate economic policies, chosen or dictated, during the post-colonial period.

One of the most illustrative of these policies include the Investor State Dispute Settlement (ISDS) mechanism found in Bilateral Investment Treaties (BITs), which are all part of neoliberal ideology. The ISDS mechanism

is a system rooted in colonial legacies that perpetuates economic colonialism by primarily benefiting foreign investors and hindering the policy space of host states to pursue their development. The ISDS mechanism is the new monster that is [increasingly haemorrhaging](#) Africa and MENA governments' resources as they are increasingly being sued in international courts for significant claims.

Across the global South, and especially in the Africa and MENA region, governments have been pushed by International Financial Institutions (IFIs) to adopt austerity measures aimed at fiscal consolidation. In turn, these governments have asked their citizens to tighten their belts as fiscal constraints deepen. But what remains intriguing is the fact that these same institutions which have pushed governments into austerity are also the ones advancing privatization as they promote public-private partnerships and emphasise the need to protect private foreign direct investments. Such protection includes foreign investors having the right to sue their host states in international courts if policy initiatives such as wage increases, public health protection, environment protection, or tax reforms threaten their rights to maximise profits, or if they pose a risk to their investments.

These cases are often heard in international tribunals, often based in the global North or the World Bank, without recourse to the host states' legal institutions. The arbitrators to these courts are often private lawyers, and the costs to states may range from penalties levied against them by the foreign investment company(ies), legal charges, interests, among others. Research published by Columbia Center on Sustainable Development on the [Costs and Benefits of Investment Treaties](#) revealed that the trends of awards over time indicate that amounts awarded have been rising, in part due to, the fact that tribunals are increasingly willing to accept income-based approaches which capture future profits or returns.

Awards against states regularly climb into the hundreds of millions of dollars, and [have reached billions of dollars](#). As of June 2021, the [average amount sought by investors](#) in each Investor State Dispute Settlement (ISDS) [claim is US\\$1.16 billion](#). The average amount states are ordered to [pay is US\\$437.5 million](#). Indeed, between 2017-2020, tribunals ordered governments to pay an average of US\$315.5 million each time they were successfully sued. A 2023 study by PwC titled International Arbitration Damages reveals that in arbitration cases decided before 2000, tribunals awarded [compound interest](#) in roughly 40% of the cases, while in cases decided between 2018 and 2022, that number had risen to 84%.

ISDS cases are an insidious threat, whose impact is seldom discussed, often hushed, and yet remains a silent killer of state's policy spaces to regulate transnational corporate activities in the public interest of the host state. It is also the new monster that is [increasingly haemorrhaging](#) Africa and MENA governments financial resources besides the [US dollars 88 billion lost annually](#) through illicit financial flows and tax evasion. Currently, sums exceeding [US dollars 100 million](#) in more than a quarter of all ISDS cases won by investors. Overall, potential liability under ISDS can be significant for governments especially in Africa and MENA countries, further shrinking their fiscal space to effectively fund public services.

In this study therefore, we aim to investigate the impact of settlement of ISDS claims and the government expenditure on critical public sector workers and public services like education, health care, social protection, infrastructure development, among others. The study builds onto existing research studies on ISDS in Africa, including PSI's most recent study on "Africa can lead the way to protect workers and public services from ISDS". In this study we will deepen this discussion by studying selected governments' annual budgets and expenditures. We will interrogate the extent to which this often-unplanned expense undermines government's response to emergent and existing public needs, consequently burdening public sector workers and their citizens.

Further, the study will identify and map out actors, opportunities and strategies for leveraging to further the campaign against ISDS in Africa. Specifically, the study will draw on the recently concluded AfCFTA Protocol on Investment (POI) given its potential to generate a new momentum to drive the campaign to stop ISDS in Africa. The crafters of the AfCFTA POI carefully drafted refinements, exceptions, reservations, and carve-outs to ensure that Africa and MENA countries that are party to the AfCFTA are protected from ISDS cases. In fact, within the AfCFTA POI, emphasis is placed on state-to-state dispute settlement.

Although the AfCFTA POI is limited in scope as it only applies to investments of investors of state parties i.e. Africa and MENA countries that are party to the AfCFTA, it has the potential to act as a blueprint for reforming existing and future investment agreements between African states and third parties. This study will therefore also identify and map out key actors, opportunities and strategies for leveraging to generate a new momentum to drive trade union advocacy in the campaign to stop ISDS in Africa.

3.0. Describe

This document is an analytical and statistical analysis of the correlation between government related costs for settlement of ISDS claims; and government expenditure on critical public sector workers and public services like education, health care, social protection, infrastructure development, among others. It is also an advocacy strategy that will draw from this analysis and previous research studies to identify key actors, and opportunities that trade unionists can utilize to leverage the AfCFTA POI to advance the campaign to stop ISDS in Africa and MENA countries.

This material should outline both the implicit and explicit costs of ISDS in Africa and MENA countries; and highlight a detailed discussion of how these costs have subsequently affected government expenditure on key public services and public sector workers. It should also outline strategies that both trade unions and AfCFTA member states can leverage to engage the African Union and national level decision makers to advance efforts to reform ISDS and international investment regime in Africa.

This material is important as it will directly contribute to equipping trade unions and AfCFTA member states with evidence to back up the campaign and policy decision to stop ISDS in Africa. It will clarify the limitations of the AfCFTA POI and highlight how stakeholders in countries that are party of the AfCFTA can leverage the POI to advocate for national level reforms. This material will also provide evidence to further support an intersectional approach to interrogating the question around the role of private sector in financing for development. The Financing for Development (FfD) CSO mechanism has during the most recently concluded FfD process ardently advanced a [call to reform the ISDS regime globally](#), noting that it directly undermines developing states' capacity to pursue its development goals. This material will therefore offer information to further support this call from an Africa and MENA perspective, including advancing alternatives to the ISDS mechanism.

4.0. Objectives

1. To investigate the correlation between settlement of ISDS claims and the government expenditure on critical public sector workers and public services like education, health care, social protection, infrastructure development, among others as evidence for stopping ISDS in Africa.
2. To analyse the AfCFTA Protocol on Investment and identify opportunities that Africa and MENA countries that are party of the AfCFTA can leverage to reform their investment treaties with third parties
3. To identify and map out key actors, opportunities and strategies for leveraging the AfCFTA Protocol on Investment towards generating a new momentum for trade unionists to drive the campaign to stop ISDS in Africa.
4. To equip key actors including the AfCFTA member States with information which they can use to strategically position themselves in the African Union and globally to propose a more progressive dispute mechanism system instead of the ISDS.

5.0. Skills and experiences required

The individual should have relevant knowledge and experience related in international trade and investment policy including the Africa Continental Free Trade agreement, fiscal policy, and human rights in relation to public services and public sector workers. Below are additional competence and technical requirements;

- Expertise and a demonstrable track record in analytical research in international trade and investment policy and in designing policy advocacy strategies.
- A clear and demonstrated understanding and knowledge of the international investment landscape and in particular Investor State Dispute Settlement (ISDS) mechanisms and its impact on Africa, and the AfCFTA Protocol on Investment.
- At least 10 years of relevant experience in international trade and investment and its intersections with labour rights, public services among others in Africa and MENA.
- Experience with assignments/projects related to policy analysis, advocacy, and strategy development
- An understanding of key labour rights and principles.
- Good writing and editing skills. Fluency in English and French is required.
- Demonstrated ability to complete complex assignments in a timely manner and delivery of quality results.

6.0. Next Steps

The material will be validated by PSI and PSI affiliates, CSOs, and Africa and MENA region government officials who will be invited to the virtual meeting. The consultant will be expected to present the material to facilitate a process through which different actors validate the material. The consultant will be expected to review the material to incorporate comments and contributions shared by the participants. Further, the consultant will also be involved in the launch and dissemination of the material, including sharing tips and strategies on how best to utilize it with various stakeholders.

7.0. Outputs

The final product will be a well synthesized report which includes an analytical and statistical analysis within the preceding chapter and a strategy at the end of the document. It should cover at least 4 countries within Africa and MENA region. The entire product should be 20 pages in length.

8.0. Application process

Applicants are requested to submit their expression of interest by 5th September 2025 covering the following information:

- short outline of the proposed research approach and strategy i.e. technical proposal
- realistic timeline for different research steps/work packages
- cost estimation i.e. financial proposal
- Curriculum Vitae

8.1. Selection criteria

Selection of the consultant will be based on the following criteria:

- Coherence of proposed research strategy/ technical proposal (40%)
- Cost/ financial proposal (40%)
- Level of proven experience and understanding of ISDS in Africa, strategy building and advocacy work within trade union context (20%)

8.2. Timeframes

- We are expecting to tender and contract on 10th September 2025
- We are expecting the first draft on 30th September 2025

- We are expecting the final draft on 14th October 2025
- We are expecting invoicing and payments in 2 instalments of 60% after delivery of first draft and 40% after delivery of final draft.

8.2. Contact Details

Please send your expression of interest including all the required documents mentioned above to Faith Lumonya at the following email address: faith.lumonya@world-psi.org and copy to: virginia.palomba@world-psi.org.